

## **REMARKS**

### **Abstract**

The abstract of the disclosure has been amended to address the Office's objections.

### **Claims**

In the Office Action, claims 1-5 and 15-19 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of published U.S. patent application Pub. No. 2002/0052793 to Dines et al and the Applicant's admitted prior art ("AAPA"). Claims 6, 7, and 20-21 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of a proposed combination of Dines, the AAPA, and published U.S. patent application Pub. No. 2005/0125341 to Miri et al. Claims 8-9, 11-14, and 22-23 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of a proposed combination of Dines, the AAPA, Miri, and published U.S. patent application Pub. No. 2005/0044034 to Perry et al.

In this amendment, claims 2, 3, 7, 9-10, 15, 21, and 23-24 have been amended, and claims 1, 4-6, 8, 11-14, 18-20, and 22 have been canceled. Claims 25-31 have been added as new claims. Support for the amendments and new claims can be found throughout the specification and claims as originally filed. Applicants submit that the pending claims are patentable for the reasons set forth below.

New independent claim 25 generally combines the features of now-canceled claims 1, 6, and 8. As such, claim 25 is directed to a method related to transaction structures concerning the forward sale of a commodity and recites:

A method comprising:

entering into, by a purchaser, a purchase agreement with a first business entity, wherein the purchase agreement obligates the purchaser to purchase volumes of a commodity from the first business entity, wherein a party, separate from the first business

entity, is obligated to deliver volumes of the commodity to the first business entity pursuant to a forward contract, and wherein the first business entity offers debt securities to investors; and

entering into, by the purchaser, a swap agreement with the party, wherein the swap agreement obligates the purchaser to pay the party an amount equal to the price at which the purchaser sells the volumes of the commodity in the open market and obligates the party to pay the purchaser a fixed price,

wherein a second business entity is obligated to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the party fails to deliver the necessary volumes of the commodity required by the forward contract, and wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement.

The cited prior art does not render claim 25 obvious for at least two reasons. First, the cited prior art does not teach or suggest the contingent supply agreement of claim 25. Second, the cited prior art does not teach or suggest the “cross-default provision” of claim 25, which states that the “purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement.” These points are address in order below.

Regarding the first point about the contingent supply agreement, the Office Action admits that the combination of Dines and the AAPA does not disclose “wherein the arrangement further obligates a second business entity to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract.” *See* Office Action at pg. 8. To overcome this deficiency, the Office Action cites Miri as disclosing this feature. It does not.

As recited in claim 25, the second business entity is only obligated to supply the commodity to the first business entity under the contingent supply agreement if the party fails to provide the require volume of the commodity. In particular, claim 25 states:

wherein a second business entity is obligated to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the party fails to deliver the necessary volumes of the commodity required by the forward contract

Miri appears to disclose a parent company with subsidiaries who deliver a commodity according to master agreements that may be terminated in case of default. Miri fails to disclose, however, that the default of the party causes “a second business [to be] obligated to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement.” Further, neither Dines, the AAPA, Perry, nor any combination of the references cures the defects of Miri.

Regarding the second point about the cross-default provision, the Office Action admits that the combination of Dines, the AAPA, and Miri does not disclose “wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement.” *See* Office Action at pg. 11. The Office Action cites Perry, and in particular lines 7-8 of the Abstract and paragraph 42 of Perry, as disclosing this feature.

Perry is directed to a paired basis swap risk and credit migration system. Lines 7-14 of the Abstract and paragraph 42 of Perry describe the termination provisions of Perry’s structure, which involve: (i) two parties entering into a forward contract, and (ii) the same two parties entering into a swap agreement. In particular, the cited passages state:

In the event of a default the system authority has the ability either terminate a swap and pay the non-defaulting counterparty an agreed upon termination payment, terminate the non-defaulting counterparty’s swap and exercise the swaption to substitute a correlated swap with appropriate correlated termination payment; or substitute a new counterparty with an identical swap as the paired swap participant. (lines 7-14 of the Abstract)

\* \* \*

3. Default: If the System's commodity swap that is entered into as a hedge in respect of any contract shall be terminated in accordance with the terms thereof, such contract shall be deemed to be in default and subject to termination. (Paragraph 42 of Perry).

More relevantly, Perry discloses a first party (A) and a second party (B) entering into a forward contract, and the same two parties, A and B, entering into a system commodity swap. See Perry at ¶¶45-46.

In contrast, the method of claim 25 involves: (i) the purchaser entering into a forward contract with a first business entity, and (ii) the purchaser entering into a swap agreement with a third party that is separate from the first business entity. Perry does not disclose that a party separate from A and B enters into the swap agreement. Perry also fails to disclose "wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the party defaults on the swap agreement," and neither Dines, the AAPA, Miri, nor any combination of the references cures the defects of Perry. For at least these reasons, claim 25 is not obvious in view of the cited references.

For at least these reasons, applicants submit that claim 25 and its dependent claims are not obvious are not obvious in view of the cited references.

Independent claims 15 and 29 are similar to claim 25. For analogous reasons, applicants submit that independent claims 15 and 29, and their respective dependent claims, are not obvious in view of the cited reference.

### **CONCLUSION**

Applicants respectfully submit that all of the claims presented in the present application are in condition for allowance. Applicants' present Response should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not

explicitly addressed herein. Applicants reserve the right to specifically address all such assertions and statements in subsequent responses. Applicants also reserve the right to seek claims of a broader or different scope in a continuation application.

Applicants have made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,



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